THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17811 OF 2006

ORAL ORDER:

This writ petition is filed seeking a declaration that the termination orders dated 16.5.2006 passed by the 3rd respondent was arbitrary and illegal. The petitioner also seeks a further declaration that the alleged inaction on the part of the 2nd respondent in treating the representation of the petitioner dated 24.5.206 is arbitrary and illegal.

The facts, in brief, are as under:

In response to the tender notification dated 24.7.2005 issued by the 2nd respondent inviting tenders from Class-I contractors to execute the work of improvement to the Nagar Kurnool-Gopalpet via Thudukurthy road to be executed in a period of nine months, the petitioner had participated and he was declared as the successful bidder. Accordingly, an agreement was executed on 19.8.2005 and by letter dated 19.8.2005 the petitioner was directed to contact the 3rd respondent for commencement of the work. The 3rd respondent handed over the site for execution of the work on 25.8.2005. Thus, according to the petitioner, the stipulated period of nine months should expire on 24.5.2006. The petitioner claims that in spite of various problems faced by him including labour shortage, he could execute more than ½ of the work. While so, a notice, dated 29.4.2006 was received from the 3rd respondent calling upon the petitioner to explain the reasons for the delay. The petitioner explained the reasons and requested to recommend for extension of the time. However, the 3rd respondent passed the impugned order terminating the contract in exercise of the power under Clause 60(a) P.S. to APSS on 16.5.2006. Aggrieved by the same, the petitioner made a representation dated 16.5.2006 requesting the 2nd respondent to revoke the order of termination which the 2nd respondent failed to consider. Hence, this

writ petition.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner contended that whereas the stipulated period of 9 months would expire on 24.5.2006, much prior to that order of termination was issued on 16.5.2006, which is arbitrary and illegal. It is also contended that the respondents are not justified in not considering the petitioner's request for extension of time, keeping in view the adverse circumstances being faced by the petitioner. It is contended that the power under 60 (a) can be invoked only when the conditions are violated without sufficient cause.

In the counter-affidavit filed by the 3rd respondent, it is explained that the period of nine months for execution of the work commenced from the date of entering into the agreement which included rainy season and thus the work has to be completed by 18.5.2006, but not 24.5.2006 as claimed by the petitioner. It is further stated that the petitioner failed to maintain the rate of progress in spite of the repeated requests to accelerate the progress of work and to complete the same in all respects within the time prescribed under the agreement. Ultimately, a final notice dated 29.4.2006 was issued directing the petitioner to explain the reasons for the delay along with documentary evidence within seven days, but the petitioner neither completed the work nor complied with the instructions to submit explanation for extension of time. In the circumstances, the impugned order was rightly issued.

At the outset, it is to be noted that the matter involves several disputed questions of fact, which cannot be enquired into and decided by this Court in a writ proceeding. Admittedly, the impugned order of termination was preceded by a notice dated 11.5.2006. That apart, Clause 60(a) of P.S. to A.P.S.S. makes it clear that the time is the essence of the contract and at any time the Executive Engineer can terminate the contract, if he is of the opinion that the contractor is delaying the execution of the work, as per the Tabular Statement. The

fact that the work could not be completed within the time is not in dispute. In the circumstances, the impugned action of the respondents cannot be held to be arbitrary or illegal and the interference by this Court under Article 226 of the Constitution of India is unwarranted.

Accordingly, the writ petition is dismissed. No costs.

However, this shall not preclude the petitioner to work out appropriate remedy as available under law, if so advised.

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(G. ROHINI, J.)

28th December, 2006.
Kgr.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.17811 OF 2006

28.12.2006

Between:

A.V. Satyanarayana. .. Petitioner.

And

The State of A.P., represented by its Secretary,
R & B Department, Secretariat, Hyderabad and
Others. .. Respondents.